

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO.399 OF 2003

IN

SUMMARY SUIT NO.493 OF 2003

P.S.Ananthanarayan .. Plaintiff

versus

Prakash N. Thakur .. Defendant

Mr G.S.Bhatt for Plaintiff.

Mr.Shailesh Shah i/b H.V.Gala & Co for Defendant.

CORAM : D.G. KARNIK, J

DATED : 16th February, 2005.

P.C:-

1. Heard learned counsel for the parties. This Summons for Judgment is taken out by the plaintiff in a suit for recovery of Rs.6,47,000/- allegedly advanced to the defendant.

2. According to the plaintiff he advanced to the defendant a sum of Rs.6,37,000/- for which the defendant executed a promissory note. The defendant also admitted the liability by a letter dated 23rd April, 2001 and a statement of even date. By filing an affidavit in reply the defendant has admitted that

he has taken a loan of Rs.3,00,000/- without interest from the plaintiff. He however disputes the liability to pay balance sum. In the affidavit he has explained the manner in which his signature was allegedly obtained on three documents and which were allegedly being used fraudulently.

3. Since the defendant has admitted to have received Rs.3,00,000/-, no leave to defend the suit can be granted to him by reason of 2nd proviso to sub-rule 3 of Rule 2 of Order 37 of the Code of Civil Procedure unless the admitted amount is deposited in Court. As regards the balance the defences raised by the defendant is possible and hence he would have to be granted leave to defend. I accordingly pass the following order :

" The defendant is granted conditional leave to defend the suit subject to his depositing in the Court Rs.3,00,000/- within a period of four weeks. On such deposit being made the plaintiff shall be at liberty to withdraw the said sum as the liability of the said sum is admitted by the defendant. On such deposit the suit shall stand transferred to the list of commercial causes. The defendant shall file the written statement within a period of

one month. "

D.G.KARNIK, J